

4. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 1338(b).

5. Defendants reside in, have transacted business and committed trademark infringement within the Southern District of Texas, and therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c).

III. FACTS

6. Family Thrift is a non-profit, charitable organization in the business of providing slightly used goods to the Houston community and other communities. For over a quarter century, Family Thrift has been providing a helping hand to those in need through the resale of previously owned merchandise. During this time, Family Thrift has been the exclusive owner of Texas Trademark Registration No. 57153 for the trademark FAMILY THRIFT CENTER (the "Mark") for its use in relation to sale of used clothing, furnishings, household goods, and appliances. Ex. 1, Texas Trademark Registration Certificate. Family Thrift has made use of the mark FAMILY THRIFT CENTER for over twenty-five years and has maintained the registration for this Mark since 1997. The Mark has been used on signs, brochures, and in newspapers to advertise Family Thrift's services and the sale of such goods. As a result of its widespread advertising, promotion, and use of the mark FAMILY THRIFT CENTER for such a long period of time, Family Thrift has developed and enjoys a valuable reputation and significant goodwill under the Mark among consumers and those familiar with the industry.

7. In addition to the Mark, Family Thrift has also used the mark FAMILY THRIFT STORE in relation to the sale of used clothing, furnishings, household goods, and appliances. While the Mark FAMILY THRIFT STORE is not registered, Family Thrift has used this mark in commerce for years and therefore enjoys common law trademark rights.

8. Family Thrift has stores in both Texas and Missouri and has used the marks FAMILY THRIFT CENTER and FAMILY THRIFT STORE (collectively, "the Marks") in interstate commerce for years.

9. Defendant is engaged in the identical business of selling clothing, furnishings, household goods, and appliances. Upon information and belief, Defendant recently began operating under the assumed name of Family Thrift & More and has received an assumed name certificate for Family Thrift & More from Harris County. Upon information and belief, Defendant knew of and was fully aware of Family Thrift Center's Marks when they sought the assumed name certificate. Defendant displays the name Family Thrift & More on the signage in front of its store in Houston, Texas.

10. Upon information and belief, Defendant owns, rents or leases store space and manages and operates at least one store using the name Family Thrift & More. Family Thrift has not authorized Defendant to use the Marks for its store. Yet, Defendant continues to use the Marks, creating likelihood of confusion as to the source of its goods and services.

11. Moreover, the likelihood of confusion is further supported by the virtually identical nature of the goods and services that Family Thrift and Defendant provide, and by the similar channels of trade in which the Parties operate and advertise. Given the long use of Family Thrift's Marks, the use of a confusingly similar mark by Defendant causes irreparable damage to the goodwill of Family Thrift's Marks.

12. In 2005, Family Thrift became aware of Defendant's unauthorized use of Family Thrift's Marks and notified Defendant that its use of the Marks constituted infringement and requested that Defendant cease its use of Family Thrift's mark. Defendant ignored Family

Thrift's request and continues to use the name Family Thrift & More. Defendant's infringement is therefore willful and deliberate.

IV. CAUSES OF ACTION

Claim I: Lanham Act Unfair Competition and Dilution

13. In adopting and using a mark that is confusingly similar to the valuable Marks that Family Thrift owns, Defendant has capitalized on Family Thrift's goodwill and reputation for excellence as well as charitable work in the industry. Defendant's unauthorized use of the Marks falsely indicates to the public that Defendant is affiliated or connected with, sponsored by, or related to Family Thrift.

14. The acts of Defendant have been conducted in commerce and they have affected Family Thrift's business and Marks. At a minimum, they constitute a false designation of origin and/or a false description of Defendant's goods and services. Such acts are specifically declared unlawful under the Lanham Act. In adopting a confusingly similar mark, Defendant has appropriated for its own use Family Thrift's Marks. By doing so, Defendant will not only likely mislead and confuse the public, but also will likely continue to diminish and destroy the distinctiveness of Family Thrift's Marks as applied to its goods and services in the industry and the goodwill associated with such Marks. Defendant's unauthorized use of Family Thrift's Marks misappropriates the benefit of the goodwill that Family Thrift has spent great effort and expense in order to build up.

15. Family Thrift is unable to control the quality of the products offered and services provided by Defendant under the Marks. This places Family Thrift's valuable reputation and goodwill in the hands of Defendant over whom Family Thrift has absolutely no control. The acts of Defendant complained of herein are jeopardizing the goodwill of Family Thrift and its valuable Marks, and such acts have caused and are causing injury to Family Thrift and to the

consuming public. Defendant should be required to account to Family Thrift for its infringement and dilution of Family Thrift's Marks and for its resulting unjust enrichment. Further, unless this Court permanently enjoins the acts of Defendant, complained of herein, the acts will be continued and will result in further injury to Family Thrift.

16. Defendant's use of the Marks is likely to cause confusion or likely to cause mistakes, or likely to deceive as to the origin, sponsorship or approval of Defendant's products and services by Family Thrift, thereby infringing Family Thrift's rights in violation of the Lanham Act, 15 U.S.C. § 1125(a). The acts of Defendant complained of above constitute acts of willful trademark infringement under 15 U.S.C. § 1125(a). Further, Defendant is diluting the exclusivity and distinctiveness of the Marks in violation of 15 U.S.C. § 1125(c). Upon information and belief, the acts of infringement by Defendant have resulted in and are currently resulting in substantial unjust profits and unjust enrichment on the part of Defendants in an amount yet to be determined.

Claim II: Texas State Trademark and Unfair Competition

17. Family Thrift is the owner of Texas Trademark Registration No. 57153 for the trademark FAMILY THRIFT CENTER. *See* Ex. 1. The acts of Defendant complained of above constitute trademark infringement and unfair competition under the laws of the state of Texas. TEX. BUS. & COM. CODE § 16.26. Defendant's unauthorized use of the Mark constitutes infringement of Family Thrift's statutory and common law trademark rights in the Mark. As a result of the infringement and unfair competition by Defendant, Family Thrift has suffered, and is suffering, injury and damage in an amount yet to be determined. Upon information and belief, the acts of infringement by Defendant have resulted and are currently resulting in substantial unjust profits and unjust enrichment on the part of the Defendant in an amount yet to be determined.

18. Furthermore, the acts of Defendant complained of above constitute trademark infringement and unfair competition under the common law of the state of Texas. Defendant's unauthorized use of the Marks constitutes infringement of Family Thrift's common law trademark rights in the Marks, as well as unfair competition under Texas law. As a result of the infringement and unfair competition by Defendant, Family Thrift has suffered, and is suffering, injury and damage in an amount yet to be determined. Upon information and belief, the acts of infringement by Defendant have resulted and are currently resulting in substantial unjust profits and unjust enrichment on the part of the Defendants in an amount yet to be determined.

Claim III: Texas Trademark Dilution

19. The facts set out above demonstrate that Defendants are diluting the exclusivity and distinction of the Marks in violation of the Texas Anti-Dilution Act. Defendant's unauthorized use of a form of the Marks constitutes a dilution of Family Thrift's Mark and injures Family Thrift's reputation, in violation of TEX. BUS. & COM. CODE § 16.29.

20. As a result of the dilution by Defendant, Family Thrift has suffered, and is suffering, injury and damage in an amount yet to be determined. Upon information and belief, the acts of dilution by Defendant have resulted and are currently resulting in substantial unjust profits and unjust enrichment on the part of Defendant in an amount yet to be determined. Family Thrift seeks an accounting and damages.

V. CONCLUSION AND PRAYER

21. WHEREFORE, Youth Educational Services, Inc. d/b/a as Family Thrift Center prays that the Court:

(a) issue a permanent injunction prohibiting Defendant from infringing on Family Thrift's Marks;

(b) issue an order that Defendant immediately and permanently remove all signs displaying the term FAMILY THRIFT;

(c) enter judgment for Family Thrift for recovery of and from Defendant the actual, consequential, incidental, special, and enhanced damages requested in this Complaint including a disgorgement of all profits made by Defendant as a result of their willful wrongful acts and a recovery of all sums by which Defendant has been unjustly enriched, together with pre-judgment interest on such damages at the maximum allowable rate, and post-judgment interest on all amount awarded until paid;

(d) enter judgment that Defendant withdraw its Harris County assumed name registration for Family Thrift & More, and

(e) enter judgment that Family Thrift be awarded from Defendant its costs and attorneys' fees incurred in connection with this action pursuant to 15 U.S.C. § 1117.

JURY DEMAND

Pursuant to FED. R. CIV. P. 38, Plaintiff hereby requests a trial by jury on all Counts.

Respectfully submitted,

BRACEWELL & GIULIANI LLP

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Youth Educational Services, Inc. d/b/a Family Thrift Center (b) County of Residence of First Listed Plaintiff Harris (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) Glenn A. Ballard, Jr. Bracewell & Giuliani LLP	DEFENDANTS Norami Enterprises, Inc. d/b/a Family Thrift & More County of Residence of First Listed Defendant Harris County (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED Attorneys (If Known) <div style="font-size: 2em; font-weight: bold; text-align: center;">H-05 - 2844</div>
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)						
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Federal Act Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN (Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Federal Trademark infringement under 15 U.S.C. § 1114 Brief description of cause:	
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VII. REQUESTED IN COMPLAINT: <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY (See instructions):	JUDGE	DOCKET NUMBER
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DATE 8/15/05	SIGNATURE OF ATTORNEY OF RECORD
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FOR OFFICE USE ONLY RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
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